

EXHIBIT J

Page 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----)
In re:) SIPA LIQUIDATION
)
BERNARD MADOFF INVESTMENT) No. 08-01789 (SMB)
SECURITIES LLC,)
)
Debtor.) (Substantively
) Consolidated)
-----)

In re:)
)
BERNARD L. MADOFF,)
)
Debtor.)
-----)
IRVING H. PICARD, Trustee for)
the Liquidation of Bernard L.)
Madoff Investment Securities)
LLC,)
) Adv. Pro. No.
Plaintiff,) 10-04995 (SMB)
)
v.)
)

TRUST U/ART FOURTH O/W/O)
ISRAEL WILENITZ,)
)
EVELYN BEREZIN WILENITZ,)
individually, and as Trustee)
and Beneficiary of the Trust)
U/ART Fourth O/W/O Israel)
Wilenitz,)
)
SARA SEIMS, as Trustee of the)
Trust U/ART Fourth O/W/O)
Israel Wilenitz,)
)
Defendants.)
-----)

(CAPTION CONTINUED ON THE NEXT PAGE)

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	IRVING H. PICARD, Trustee for)
2	the Liquidation of Bernard L.)
	Madoff Investment Securities)
3	LLC,)
) Adv. Pro. No.
4	Plaintiff,) 10-04818 (SMB)
)
5	v.)
)
6	TOBY HARWOOD,)
)
7	Defendant.)
	-----)	
8	IRVING H. PICARD, Trustee for)
	the Liquidation of Bernard L.)
9	Madoff Investment Securities)
	LLC,)
10) Adv. Pro. No.
	Plaintiff,) 10-04914 (SMB)
11)
	v.)
12)
	EDYNE GORDON, in her capacity)
13	as the executrix and primary)
	beneficiary of the estate of)
14	Allen Gordon,)
)
15	Defendant.)
	-----)	
16	IRVING H. PICARD, Trustee for)
	the Liquidation of Bernard L.)
17	Madoff Investment Securities)
	LLC,)
18) Adv. Pro. No.
	Plaintiff,) 10-04826 (SMB)
19)
	v.)
20)
	ESTATE OF BOYER PALMER, DIANE)
21	HOLMERS, in her capacity as)
	Personal Representative of the)
22	Estate of Palmer, and BRUCE)
	PALMER, in his capacity as)
23	Personal Representative of the)
	Estate of Boyer Palmer,)
24)
	Defendant.)
25	-----)	

1 -----)
 IRVING H. PICARD, Trustee for)
 2 the Liquidation of Bernard L.)
 Madoff Investment Securities)
 3 LLC,)
) Adv. Pro. No.
 4 Plaintiff,) 10-04644 (SMB)
)
 5 v.)
)
 6 RUSSELL L. DUSEK,)
)
 7 Defendant.)
 -----)
 8 IRVING H. PICARD, Trustee for)
 the Liquidation of Bernard L.)
 9 Madoff Investment Securities)
 LLC,)
 10) Adv. Pro. No.
 Plaintiff,) 10-04541 (SMB)
 11)
 v.)
 12)
 KENNETH W. PERLMAN; FELICE J.)
 13 PERLMAN; and SANFORD S.)
 PERLMAN,)
 14)
 Defendant.)
 15 -----)
 IRVING H. PICARD, Trustee for)
 16 the Liquidation of Bernard L.)
 Madoff Investment Securities)
 17 LLC,)
) Adv. Pro. No.
 18 Plaintiff,) 10-04728 (SMB)
)
 19 v.)
)
 20 BRUNO DIGIULIAN,)
)
 21 Defendant.)
 -----)
 22
 23
 24
 25

1 -----)
 IRVING H. PICARD, Trustee for)
 2 the Substantively Consolidated)
 SIPA Liquidation of Bernard L.)
 3 Madoff Investment Securities)
 LLC and Bernard L. Madoff,)
 4) Adv. Pro. No.
 Plaintiff,) 10-04905 (SMB)
 5)
 v.)
 6)
 TRAIN KLAN, a Partnership;)
 7 FELICE T. LONDA, in her)
 capacity as a Partner in Train)
 8 Klan; CLAUDIA HELMIG, in her)
 capacity as a Partner in Train)
 9 Klan; TIMOTHY LANDRES, in his)
 capacity as a Partner in Train)
 10 Klan; PETER LONDA, in his)
 capacity as a Partner in Train)
 11 Klan; TIMOTHY HELMIG, in his)
 capacity as a Partner in Train)
 12 Klan; and WENDY LANDRES, in her)
 capacity as a Partner in Train)
 13 Klan,)
)
 14 Defendants.)
 -----)
 15 IRVING H. PICARD, Trustee for)
 the Substantively Consolidated)
 16 SIPA Liquidation of Bernard L.)
 Madoff Investment Securities)
 17 LLC and Bernard L. Madoff,)
) Adv. Pro. No.
 18 Plaintiff,) 10-004621 (SMB)
)
 19 v.)
)
 20 DONALD A. BENJAMIN,)
)
 21 Defendant.)
 -----)
 22
 23
 24
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1 TRUSTEE'S MOTION TO COMPEL DISCOVERY IN THE

2 THREE ADVERSARY PROCEEDINGS:

3

- 4 i) Picard v. Benjamin, Adv. Pro. No. 10-04621
- 5 ii) Picard v. DiGiulian, Adv. Pro. No. 10-04728
- 6 iii) Picard v. Train Klan, Adv. Pro. No. 10-04905

7

8 -and-

9 CHAITMAN LLP'S MOTION TO COMPEL DISCOVERY AND THE
10 TRUSTEE'S CROSS-MOTION FOR A PROTECTIVE ORDER IN ONE
11 ADVERSARY PROCEEDING, PICARD V. WILENITZ, ADV. PRO.
12 NO. 10-04995

13

14 -and-

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16 CHAITMAN LLP'S MOTION FOR PROTECTIVE ORDER AND QUASH
17 TRUSTEE'S DEPOSITIONS IN THE FOLLOWING ADVERSARY SIX
18 PROCEEDINGS:

19

- 20 i) Picard v. Perlman, Adv. Pro. No. 10-0454
- 21 ii) Picard v. Gordon, Adv. Pro. No. 10-04914
- 22 iii) Picard v. Harwood, Adv. Pro. No. 10-04818
- 23 iv) Picard v. Estate of Palmer, Adv. Pro. No.
24 10-04826
- 25 v) Picard v. DiGiulian, Adv. Pro. No. 10-04728
- vi) Picard v. Dusek, Adv. Pro. No. 10-04644

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2 TRANSCRIPT OF PROCEEDINGS

3 in the above-titled action, held on Tuesday,
4 December 13, 2016, at JAMS, 680 Eighth Avenue, New
5 York, New York, commencing at approximately 10:00
6 a.m., before Eileen Mulvenna, CSR/RMR/CRR, Certified
7 Shorthand Reporter, Registered Merit Reporter,
8 Certified Realtime Reporter, and Notary Public of
9 the State of New York.

10

1 B E F O R E:

2

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A P P E A R A N C E S:

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-and-

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1 MR. JACOBS: When you have an
2 opportunity to read Mr. Dubinski's report,
3 you'll see that our expert disagrees --

4 THE ARBITRATOR: Okay.

5 MR. JACOBS: -- with that self-serving
6 testimony. And, furthermore, that it's not
7 supported by any of the voluminous effort
8 over long periods of time that he did
9 consider and that has been made available.

10 THE ARBITRATOR: Okay. But you're
11 saying that you are attempting to find --
12 haven't phrase it this way, but you're saying
13 you're attempting to find records which, if
14 reviewed, potentially could support
15 Mr. Madoff's view of the world; is that
16 correct?

17 MR. JACOBS: Yes. We are -- well,
18 not -- it's not specifically how I would
19 phrase it, but we are looking for --
20 Ms. Chaitman has requested actual stock
21 trading activity and records demonstrating
22 actual trading stock activity, whether it be
23 in House 5 or elsewhere, for those earlier
24 periods of time, which Mr. Madoff's testimony
25 has now opened the door to. So whether it

1 refutes or supports that testimony, we will
2 produce it if we can identify it.

3 THE ARBITRATOR: And I think as a
4 practical matter, unless there's some reason
5 why this can't occur, should that be made
6 available, and it doesn't sound like under
7 any conceivable scenario it could occur
8 before next Tuesday, the possibility exists
9 that Mr. Madoff may be deposed a third time.

10 MR. JACOBS: That --

11 MS. CHAITMAN: Judge, can I point
12 something out?

13 THE ARBITRATOR: Yeah.

14 MS. CHAITMAN: DiPascali pled in 2010,
15 I believe. Madoff pled in 2009. They
16 both -- and you'll see the plea because they
17 both said the same thing. The first words
18 out of DiPascali's mouth were "In the early
19 1990s, we started a fraud." So this is not a
20 new issue.

21 And what Ted has really said to you,
22 in substance, is that they put in the e-data
23 room what supports their expert's report,
24 which is --

25 MR. JACOBS: That's not true.

1 Our objective is first and foremost to get it
2 correct. We don't want to sue anyone who
3 doesn't owe us money. We don't want to
4 recover a single dollar that isn't
5 appropriately recovered under the relevant
6 statutory framework.

7 Ms. Chaitman has all of the documents
8 that are readily available, have been
9 restored and have been considered, good or
10 bad, to the trustee's case currently.

11 Now, we may undertake additional
12 restorations. I don't know. I can't speak
13 definitively about that. Ms. Chaitman is
14 actively litigating and challenging our
15 expert conclusion as to the earlier periods
16 of time.

17 We never intended to credit or rely
18 upon the testimony of Bernard Madoff,
19 frankly. He committed the world's greatest
20 Ponzi scheme. I don't think his testimony is
21 reliable or should be credited in any sense
22 or fashion. However, the judge has allowed
23 it.

24 Now that we're going down that road,
25 we will endeavor to see if, on some floppy

1 disk somewhere in a box in a warehouse, there
2 might be early stock trading records from
3 periods predating what we currently have.

4 So you know, all of the stock trading
5 records that we do have and we have made
6 available were obtained because we went out
7 in the world and subpoenaed them and
8 diligently and aggressively tried to find
9 them wherever they may exist.

10 Ms. Chaitman did too. The DTC is
11 under a regulatory framework where it was, by
12 law, required to keep records for a certain
13 number of years. That's why they had
14 documents back through 2002 which they
15 produced to us and we in turn produced to
16 Ms. Chaitman.

17 We also scoured, like I said, all of
18 the DTC terminal that was active and live by
19 BLMIS as of the time we took custody of it.
20 We restored all of that data. We put it in
21 the data room.

22 We also subpoenaed the SEC. We
23 cooperated -- they cooperated with us. They
24 shared with us the fruits of their similar
25 investigation.

1 discredited claims, he disallowed claims on
2 the basis that there was no net equity
3 because he didn't recognize any trades going
4 back to the 1980s. So --

5 THE ARBITRATOR: Also, you would argue
6 then that the Ponzi presumption --

7 MS. CHAITMAN: Of course. You have
8 to --

9 THE ARBITRATOR: -- applies.

10 MS. CHAITMAN: -- yes. So --

11 THE ARBITRATOR: Let me modify my
12 question to Mr. Jacobs.

13 And if we take out House 5, House 17,
14 apart from the DTC and FINRA and other
15 third-party records that I gather are in the
16 e-data room, have you or, to your knowledge,
17 has your team found pre 1982 trading records?

18 MS. CHAITMAN: 1992.

19 THE ARBITRATOR: 1992.

20 MR. JACOBS: Not that I can confirm or
21 know of. We are looking. And I'm not
22 directly involved with that effort, so it's
23 certainly information I can find out. And
24 we're trying very hard to get it.

25 THE ARBITRATOR: And understanding

1 that it's perhaps looking for a needle in a
2 haystack, it seems to me there's a need to
3 come up with an end date by which you'll
4 respond saying either you found something or
5 you haven't and, adding into that, the
6 understanding that even given the size of the
7 Madoff fraud as a whole, it would not be
8 sensible to restore every microfiche and look
9 through it, but there has to be a good-faith
10 effort to look.

11 MR. JACOBS: Right. And we are
12 conducting that investigation right now.
13 We're absolutely conducting that
14 investigation in direct response to
15 Ms. Chaitman's request.

16 THE ARBITRATOR: But there has to be
17 some end date.

18 MR. JACOBS: My only -- my only
19 hesitation in providing one is that -- I'm
20 pretty confident that if there is anything
21 that we can find that contains these type of
22 records from an earlier period, it's going to
23 be on media that we're going to have a
24 challenge restoring.

25 So it might be microfiche, microfilm,

1 some type of backup tape that is for a
2 computer program or software or hardware that
3 doesn't exist any longer.

4 So we have to -- when we were dealing
5 with items like that, we have to send it out
6 to a vendor to see if they can restore it or
7 give us a quick peek to kind of try to give
8 us a sense if it would be fruitful for a
9 fuller restoration. All of this costs a lot
10 of money, so we weigh the balance of -- all
11 of those factors have to be considered and I
12 think are fairly considered under
13 proportionality analysis.

14 But the bottom line, for the purposes
15 of your question, is it takes time.

16 THE ARBITRATOR: Okay. But let me
17 rephrase it and perhaps in terms of this
18 question: How long will it take you to make
19 a good-faith effort to determine whether
20 there are such pre 1992 trading records not
21 previously produced?

22 Putting aside how long it will take to
23 produce them, but to determine whether there
24 are such records.

25 MR. JACOBS: My answer is the same,

1 view of this case and did not put into the
2 e-data room documents that he did review
3 which are inconsistent with the positions
4 he's taken.

5 So I think that we're entitled to a
6 list. There's a warehouse on Long Island in
7 such-and-such a town and it contains X and we
8 didn't put -- they must have all this.

9 THE ARBITRATOR: Except I gather they
10 have it annotated in such a way that it's
11 work product --

12 MS. CHAITMAN: Let them show it to
13 you.

14 THE ARBITRATOR: And your assumption
15 is one that I'm not willing to buy into. The
16 trustee and both sides and every litigant has
17 an ethical obligation. And I assume that
18 even if you don't like the way in which the
19 trustee is going about -- is functioning,
20 including claw-back actions against people
21 who you view as victims, I have no basis to
22 assume that they're proceeding dishonestly.

23 In terms of me looking at the
24 inventory, it probably is almost as useless
25 as you looking at the inventory. And I'm not

1 saying that disparagingly. Because it's
2 going to be extraordinarily lengthy and
3 probably not terribly informative. Because
4 if it were informative, Mr. Jacobs and his
5 colleagues could have said, oh, we found, you
6 know, this treasure trove of documents and
7 now the issue is how long it's going to take
8 to restore it.

9 MR. JACOBS: And, your Honor --

10 THE ARBITRATOR: I take it that you
11 can represent to me that there's nothing on
12 the face of the inventory that reflects
13 pre 1992 trading records that are not yet in
14 the e-data room.

15 MR. JACOBS: Absolutely not.

16 THE ARBITRATOR: You're agreeing with
17 me.

18 MR. JACOBS: Yes, there's nothing
19 there -- no, there's nothing of that nature.

20 And, your Honor, the request that
21 Ms. Chaitman is making is absolutely -- for
22 you to order that would be absolutely
23 unprecedented. And without a particularized
24 articulation of the need or what is missing
25 from the over 4 million, 4 million,

1 THE ARBITRATOR: Sure. Bear with me
2 one second. I saw that there was an order, I
3 don't know whether it's one of your cases, in
4 Greif, Greif.

5 MR. JACOBS: Greif.

6 THE ARBITRATOR: Is that --

7 MR. JACOBS: An order from --

8 THE ARBITRATOR: Yes, there was one
9 where you sent it and said, I sent it
10 prematurely, the order hadn't been entered --

11 MR. HUNT: Oh, yeah, yeah. The order
12 has been entered now.

13 THE ARBITRATOR: -- and now --

14 MR. HUNT: Yes.

15 THE ARBITRATOR: But I have no
16 paperwork, so I have no idea what that's
17 about.

18 MR. HUNT: Okay. Yeah, we need to get
19 that to you.

20 THE ARBITRATOR: Okay.

21 MR. HUNT: We're off the record now.

22 THE ARBITRATOR: Yes.

23 (The time is 4:50 p.m. The
24 hearing concluded.)
25

1 C E R T I F I C A T E

2

3 STATE OF NEW YORK)

4) ss:

5 COUNTY OF WESTCHESTER)

6

7 I, Eileen Mulvenna, CSR/RMR/CRR and a
8 notary public within and for the State of New York,
9 do hereby certify:

10 That I reported the proceedings in the
11 within-entitled matter, and that the within
12 transcript is a true record of such proceedings.

13 I further certify that I am not related by
14 blood or marriage to any of the parties in this
15 matter and that I am in no way interested in the
16 outcome of the matter.

17 IN WITNESS WHEREOF, I have hereunto set my
18 hand this 15th day of December, 2016.

19

20

Eileen Mulvenna, CSR/RMR/CRR

21

22

23

24

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